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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.556 OF 2004
IN
SUIT NO.353 OF 2004

Steelage Industries Limited)
an existing Company within the meaning)
of the Companies Act, 1956 and having)
its Registered Office at 156,)
Dr.Mascarenhas Road, Opp.Post Office)
Mazagaon, Mumbai 400 010.).. PLAINTIFF

VERSUS

1) The Collector of Mumbai)
having his office at Old Customs)
House, Shahid Bhagatsingh Marg)
Fort, Mumbai 400 001.)

2) The Government of Maharashtra)
through the Secretary, Revenue &)
Forest Department, Sachivalaya)
Mumbai 400 032.)

3) The Union of India)
through the Secretary, Ministry)
of Urban Development, Nirman Bhavan)
Maulana Azad Road, New Delhi 110011).. DEFENDANTS

Mr.D.J. Khambhata with Mr.Salil Shah i/b.Amarchand & Mangaldas for the Plaintiff.

None present for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 14TH AUGUST 2006

JUDGMENT PRONOUNCED ON : 19TH AUGUST 2006

JUDGMENT :

. This Motion has been taken out by the Plaintiff for a decree on admission.

2. On 14th April 1910, the Secretary for India in Council, i.e. the predecessor of Defendant Nos.2 and 3 leased the suit property to the predecessor in interest of the Plaintiff. This lease was for a period of 99 years commencing from 1st September 1903, with an option for renewal of the lease in perpetuity. The Plaintiff acquired the property on 29th December 1971. The Plaintiff has been in occupation of the suit property since then and has been paying the rent as demanded by Defendant No.1.

3. The initial term of the lease was to expire on 31st August 2002. Therefore, on 16th April 2001, the Plaintiff exercised its option to renew the lease for a further period of 99 years and requested Defendant No.1 to provide a copy of the renewed lease. As there was no response from the Defendants, the Plaintiff reiterated its request on 22nd January 2002. Another reminder was sent on 30th August 2002, a day prior to the expiry of the lease. The Plaintiff continued to remain in occupation of the suit property. Meetings were held between the representatives of the Plaintiff and Defendant No.1 for renewal of the lease. On 5th April 2003, Defendant No.1 informed the Plaintiff that after expiry of the lease on 31st August 2002, the Plaintiff would have to pay lease rentals at 2% of the market

value of the property as on the date of expiration of the lease, upto 31st December 1998. The Plaintiff was also informed that it would have to pay rent on terms and conditions as decided by the Government for a period of 30 years commencing from 1st January 1999 with the rent being reviewed every ten years. Defendant No.1, therefore, called upon the Plaintiff to pay the lease rentals worked out on the aforesaid basis.

4. The Plaintiff called upon Defendant No.1 to withdraw the letter of 5th April 2003 by stating that the lease stood renewed in view of the Plaintiff having exercised its option. The lease rental was recalculated by Defendant No.1 and an amount of Rs.1,51,56,837/- was demanded from the Plaintiff for the period from 1st September 2002 to 13th December 2003 at the rate of Rs.1,14,42,629/- per annum. Defendant No.1 relied on the decision taken by the Government on 5th October 1990 that all lease renewal in the State of Maharashtra would only be for a period of 30 years. The earlier lease deed offering an option to the Plaintiff to renew the same for a further period was not accepted by the Defendants. The Plaintiff has, therefore, filed the present Suit for a declaration that the Indenture of Lease dated 14th October 1910 is valid, subsisting and binding. The Plaintiff has also claimed specific performance of the said lease deed by granting to the

Plaintiff a new lease for the premises for a further period of 99 years.

5. In the affidavit in support of the Notice of Motion, the Plaintiff has contended that on 9th February 2004 the Plaintiff received a demand notice dated 17th December 2003 wherein the Defendants claimed an amount of Rs.2100/- as land revenue for the period 1st September 2002 to 31st August 2004. The Plaintiff paid this amount together with some additional amount and obtained a receipt for the amount of Rs.2153/- from the Defendants in respect of arrears of rent from 1st September 2002 to 31st August 2003 and the current rent from 1st September 2003 to 31st August 2004. The Plaintiff, therefore, contends that issuance of this demand notice and the receipt amounts to an admission by the Defendants of the Plaintiff's case. The Plaintiff has, therefore, claimed a decree on admission.

6. Nobody appeared for the Defendants, though served. No Written Statement has been filed in the matter although on 12th June 2006 an adjournment for eight weeks was sought on behalf of the Defendants in order to file a Written Statement.

7. In my opinion, it would be inappropriate to grant a decree on admission. The mere fact that a

demand notice dated 17th December 2003 for a sum of Rs.2100/- was issued to the Plaintiff, would not necessarily mean that the Defendants had admitted and acknowledged that the lease of the suit premises stands renewed on the terms and conditions and for the lease rent mentioned in the original lease deed. There is no unambiguous admission of the Defendants regarding renewal of the lease. No inference can be drawn in that regard only on account of the demand notice having been issued. Acceptance of lease rentals at the old rate would not necessarily constitute an admission made on behalf of the Defendants. Prima facie, issuance of a receipt for the sum of Rs.2153/- which was paid by the Plaintiff would not, in my opinion, constitute an admission on the part of the Defendants leading to a decree on admission.

8. Undisputedly, the Defendants have not filed the Written Statement. Therefore, while dismissing the Motion, the matter should be placed for directions on 28th August 2006 to fix a date for placing the matter on board for a decree for want of Written Statement.

9. Notice of Motion dismissed with the aforesaid directions.